Supreme Court, U.S.
FILED

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06-425 SEP 19 2006

No. OFFICE OF THE CLERK

In the Supreme Court of the United States

JANE DOE (A.H.),

Petitioner,

v.

CARNIVAL CORP.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where a minor does not have a legal representative appointed, can the normal three-year period for filing suit contained in 46 U.S.C. app. § 763a be shortened to one year in light of 46 U.S.C. app. § 183b(c)?

Whether, by the plain reading and logical interpretation of 46 U.S.C. app. § 183b(c) and 46 U.S.C. app. § 763a, Petitioner had either one year from the appointment of a legal representative or three years from the date of injury within which to bring suit.

Whether the courts should give full faith and effect to 46 U.S.C. app. § 183b(c), which states that a contractually imposed shortened limitation period does not apply to a minor victim unless and until a legal representative is appointed within three years of the event giving rise to a cause of action.

Is Respondent's one-year limitation provision which attempts to require a minor with no appointed legal representative to file suit one year from the *date of injury* enforceable when 46 U.S.C. app. § 183b(c), in contrast, requires that any contractual limitation of time run from the *date of appointment of a legal representative* for the minor?

Whether the Eleventh Circuit's decision denies Petitioner the protection which Section 183b(c) affords both minors and incompetents for whom no legal representative has been appointed and approves disparate treatment of minor claimants who lack a legal representative.

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OPINIONS BELOW

The Order of the United States Court of Appeals for the Eleventh Circuit denying Petitioner's Petition for Rehearing and Petition for Rehearing en Banc (App. A) and the Opinion of the United States Court of Appeals for the Eleventh Circuit affirming the decision of the United States District Court for the Southern District of Florida (App. B) are both unpublished.

The Order of the United States District Court for the Southern District of Florida granting Summary Judgment for the Defendant/Respondent (App. C) and the Final Judgment entered thereon (App. D) are also unpublished.

STATEMENT OF JURISDICTION

The opinion of the Eleventh Circuit was issued February 14, 2006. Petitioner timely filed a Petition for Rehearing and for Rehearing en Banc in the Court of Appeals, which was denied by Order of the Eleventh Circuit entered on June 21, 2006. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254.

STATUTES INVOLVED IN THIS CASE

The following statutory provisions are involved:

Title 46, United States Code, Appendix Section 763a, *Limitations:*

Unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained

unless commenced within three years from the date the cause of action accrued.

Limitations of Vessel Owner's Liability Act, Title 46, United States Code, Appendix Section 183b, ***Stipulation limiting time for filing claims and commencing suit:***

(a) Time periods

It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

* * *

(c) Mental incompetents; minors; wrongful death actions

If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided,*

however, That such appointment be made within three years after the date of such death or injury.

STATEMENT OF THE CASE

Petitioner seeks certiorari review of a decision of the United States Court of Appeals for the Eleventh Circuit (App. B, pp. 3a-6a) which affirmed Summary Judgment in favor of the Respondent. (App. C, pp. 7a-16a; App. D, 17a-18a)

On appeal, the only issue before the Eleventh Circuit was whether Petitioner's claim was time-barred. (App. B, p. 3a)

Federal jurisdiction in the lower court was based on Title 28 United States Code Section 1332, Diversity of Citizenship and the claims asserted arise under the General Maritime Law of the United States.

Petitioner alleged below that she was sexually assaulted by Respondent's employee while vacationing on Respondent's cruise ship as a seventeen year-old. (App. B, pp. 4a, 8a) Petitioner's action against Respondent was filed within three (3) years of the incident giving rise to her cause of action but more than one (1) year from the date of her injury and from the date of her eighteenth birthday. (App. B, p. 4a)

The ticket for passage issued by Respondent contained a limitation period of one year from the time of injury: "Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness

or death . . ."[1] Both the District and Appellate Courts determined that Respondent's modified limitation period complied with federal admiralty law, which provides that the otherwise applicable three-year limitation period can be contractually shortened to no less than one year. *See* 46 U.S.C. app. § 183b(a). (App. B, pp. 4a; App. c, 12a)

Petitioner further asserted, however – and both the District and Appellate Court's recognized – that Section 183b(a) is specifically limited in cases involving minors by Section 183b(c), which states in pertinent part:

> If a person who is entitled to recover on any such claim is mentally incompetent or a minor . . . any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent [or] minor . . . but shall be applicable from the date of the appointment of such legal representative: *Provided, however*, That such appointment be made within three years after the date of such . . . injury.

(Emphasis in original) 46 U.S.C. app. § 183b(a). (App. B, pp. 4a; App. C, 13a)

Petitioner argued below that the plain language of Section 183b(c) precludes application of the Respondent's one-year shortened limitation period to bar her claim where, as here,

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1 Petitioner does not include a copy of the ticket provision in the appendix hereto as the pertinent language is undisputed; Petitioner's copy is in fine print and blurred and thus nearly illegible; and it has previously been made a part of the record below by Respondent.

Petitioner's entitlement to recovery accrued when she was a minor and no legal representative was appointed. (App. B, pp. 4a-5a; App. C, p. 10a)

The District Court rejected Petitioner's contention that her claims brought within the three-year admiralty statute of limitations were timely under the provisions of Section 183b(c) (App. C, p. 12a) and entered summary judgment for Respondent on the basis that Petitioner's claims were time-barred. (App. C, p. 15a)

The Court of Appeals for the Eleventh Circuit affirmed (App. B, pp. 3a-6a) and denied Petitioner's Petition for Rehearing and Rehearing en Banc. (App. A, pp. 1a-2a)

This Petition for Certiorari review of the decision rendered by the Eleventh Circuit Court of Appeals has been timely filed within the time provided for under Supreme Court Rule 13.

REASONS FOR GRANTING THE PETITION

Certiorari review should be granted in this case because the Eleventh Circuit has decided an important question of federal statutory interpretation involving the protection of minors that has not been, but should be, settled by this Court.

The decision which is the subject of this Petition was rendered in a case of first impression interpreting the provisions of Title 46, United States Code, Appendix Section 183b(c) with respect to the rights of claimants who were minors when their entitlement to sue arose and for whom no legal representative has been appointed.

Unless this Court grants review, the absence of controlling judicial precedent with respect to the issue raised herein promotes inconsistency in the treatment of minor claimants in the same position as the Petitioner and gives tacit approval to a disparate application of Section 183b(c) to those claimants whose cases fall within this gray area of the law.

A. The courts below erred in dismissing this lawsuit because Petitioner, a minor, had a statutory right to bring suit within three years, and as such, Respondent's attempt to contractually bind her to a one-year limitation period is ineffective

The prevailing statute of limitations applicable to a suit for a maritime tort resulting in personal injury is three (3) years. 46 U.S.C. app. § 763a. Cruise lines routinely seek to further limit the three-year statute of limitations by inserting fine-print limitation provisions within their book-like passenger tickets. Cruise lines generally are permitted to contractually reduce the three-year limitation period to a period of no less than one (1) year:

> It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

46 U.S.C. app. § 183b(a). However, there are important

exceptions to the cruise lines' ability to shorten the limitation period, as discussed below.

Minors, such as Petitioner, the mentally incompetent, and the deceased (such as in the case of a wrongful death) who do not have legally-appointed representatives are specifically exempt by statute from any contractual effort of the cruise lines to deprive them of the standard three-year statute of limitations provided for in 46 U.S.C. app. § 763a:

> **If a person who is entitled to recover on any such claim is** mentally incompetent or **a *minor***, or if the action is one for wrongful death, **any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such** incompetent, ***minor***, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided, however,* That such appointment be made within three years after the date of such death or injury.

(emphasis in bold is added; remaining emphasis in original) 46 U.S.C. app. § 183b(c).

B. The courts below erred in holding that Petitioner must be a minor *at the time of filing suit*; being a minor *at the time of the injury* is sufficient to invoke the protection of 46 U.S.C. app. § 183b(c)

The courts below took the position – advanced by Respondent – that because Petitioner was no longer a minor on the date that she filed her original complaint, she is not protected by Section 183b(c). (App. B and App. C) The lower and appellate courts determined that Petitioner must

"currently" be a minor, and based their conclusion on the existence of the present-tense verb "is" in the first sentence of Section 183b(c). (App. B and App. C)

In so reasoning, the lower courts ignored the subject of the phrase at issue. The first part of the first sentence of 46 U.S.C. app. § 183b(c) reads: "If ***a person who is entitled to recover*** on any such claim is mentally incompetent or a **minor**" (emphasis added). The subject of the foregoing phrase is "a person who is entitled to recover." Such a person becomes "entitled" to "recover" for purposes of the statute when they suffer bodily injury as a result of a tort; not merely upon initiation of a lawsuit.

The word "entitle" is generally defined as "to furnish with proper grounds for seeking or claiming something." *See* Webster's Ninth New Collegiate Dictionary (1990), p. 416. The example offered by Webster's to demonstrate the proper use of the word "entitle" is: "This ticket entitles the bearer to free admission." *Id.* It follows that, just as one holding a ticket for free admission is *entitled* to the free admission well before he may gain that admission, one suffering bodily injury as the result of a tort is *entitled* to recover on that claim well before she initiates her lawsuit.

The protection that 46 U.S.C. app. § 183b(c) affords persons who are minors *at the time of their injury* is reflective of the common law, which historically did not enforce contracts against persons who were minors at the time of entry into a contract. *See, e.g., Sheafe et al. v. Kimball et al.*, 21 F.Cas. 1208 (S.D.N.Y. 1851).

In *Sheafe*, shipowners sought to enforce a charter-party contract against a group of partners, which included John Dunkin, a 20-year-old man who was a considered a minor at

the time of execution of the contract. The court held that the charter-party contract was a maritime contract subject to admiralty law, and that Mr. Dunkin was not bound by it because he was a minor at the time that it was executed. *Id.* at 1209. The court refused to enforce the contract against Mr. Dunkin, even though he attained the age of majority just five months after execution of the contract, and thus would have legally been an *adult* by the time that *suit was initiated.*

The courts below all but ignore *Sheafe* in their opinions.

In sum, Petitioner had not yet reached the age of majority at the time she was sexually assaulted by Respondent's crew member. Hence, she was a "minor" when she became a "person entitled to recover," and as such, is entitled to the protection of 46 U.S.C. app. § 183b(c).

C. The one-year limitation provision in the passenger cruise ticket remains unenforceable against minors such as Petitioner where no legal guardian is appointed

The Eleventh Circuit cited no authority for its conclusion that Section 183b(c) is a tolling provision which ends abruptly when a claimant attains the age of 18 years. (App. B, p. 5a)

The second part of 46 U.S.C. app. § 183b(c) states that "any lawful limitation of time prescribed in such contract ***shall not be applicable so long as no legal representative has been appointed*** for such incompetent, minor or decedent's estate but shall be applicable from the date of the ***appointment*** of such legal representative" (emphasis added).

Notwithstanding the Eleventh Circuit's opinion, the more plausible interpretation of Section 183b(c) is that the statute simply means what it says: that the shortened limitations

period does not apply to a minor victim ("if a person . . . is a minor . . . limitation shall not be applicable") unless or until a legal representative is appointed within three years of the event ("but shall be applicable from the date of appointment . . . provided . . . appointment is made within three years after the . . . injury"). 46 U.S.C. app. § 183b(c)

The crucial phrase, "limitation . . . shall not be applicable" is plausibly modified *only* by the further statutory provision resurrecting "applicability" solely on the basis of the triggering event that a legal representative is appointed. Significantly, in the instant case, no triggering event occurred resurrecting applicability of Respondent's shortened limitation period. Accordingly, because no representative was ever appointed, the shortened limitation period is inapplicable.

By disregarding the language emphasized above, the Eleventh Circuit freed itself from the statute's actual constraints and instead created a different rule from that which is written.

Below, the Respondent argued (and the courts apparently accepted) that "it is unnecessary for the Court to construe this language because, once Petitioner reached the age of majority, she became *sui juris* to act as her own legal representative." (App. B and App. C) In order to make such a statement, one is forced to ignore the plain language of the statute itself. The words "legal" and "appointed" must be assumed to be purposefully included in the statute and to have real meaning; they cannot be disregarded as merely superfluous. These words plainly call for the completion of a judicially-recognized procedure for appointing a legal representative as a prerequisite to imposition of an abbreviated limitation period on the protected persons delineated within the statute (i.e., minors, incompetents, and

the deceased). In other words, as the statute clearly indicates, where "no ***legal*** representative has been ***appointed***," the individual continues to benefit from the provision's protection. (Emphasis added) 46 U.S.C. app. § 183b(c).

Further, and significantly, Section 183b(c) is devoid of any language which states that a minor automatically loses her protection from a shipowner's ticket limitation provision when she reaches the age of majority. If such a result were intended, it surely would have been stated within the Statute, and it should not be judicially interjected after the fact.

In the present case, it is undisputed that the Petitioner had no legal representative appointed for her at any time between the date of the subject incident and the time the Petitioner filed her lawsuit. Accordingly, she is entitled to continue to enjoy the protection of Section 183b(c) for the full length of the standard three-year maritime statute of limitations.

D. At least one court has previously interpreted Section 183b(c) as allowing a person within the class protected by said Section who is without a legal guardian three years from the date of injury within which to bring suit

In *Boehnen v. Carnival Cruise Lines, Inc.*, 778 So. 2d 1084 (Fla. 3d DCA 2001), a 19-year-old with a fourth-grade intellectual capacity was raped by a cruise line employee. She brought suit in her individual capacity within three years of her attack and prior to any guardian being appointed on her behalf. Therein, the Respondent herein (represented by the same law firm as in the instant action) contended that a mentally challenged person loses the protection of Section 183b(c) if no legal guardian is appointed within three years from the injury date.

The Florida Third District Court of Appeal disagreed and held that **"the statute allows a mentally incompetent person *without a legal guardian* to bring an action up to three years from the date of injury."** (emphasis added) *Id.* at 1085. The court explained that **the plaintiff "was protected by Section 183b(c) when she filed her original complaint [in her individual capacity] within three years from the date of her injury."** *Id.* [2]

There is no articulated difference between the protection afforded a mentally incompetent person and a minor by 46 U.S.C. app. § 183b(c). The language of said Section is identical as respects both minors and incompetents.

Thus, similar to the mentally incompetent person in *Boehnen*, Petitioner was legally entitled to file suit on her own behalf within three years without the need for the appointment of a guardian (as she had turned of legal age), and her status as *sui juris* at the time of the filing of the complaint does not deprive her of the protection afforded her under Section 183b(c).

E. Well-established public policy supports Petitioner's interpretation of Section 183b(c), as does at least one cruise line's interpretation of the statute

In enacting Section 183b(c), Congress created a new public policy, *Moore v. American Scantic Line*, 30 F.Supp. 843 (S.D.N.Y. 1939), the purpose of which is to prevent shipowners from imposing on passengers unreasonably short

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2 *See also, Powell v. Compagnie Generale Transatlantique, Ltd.*, 263 N.Y.S. 2d 17, 18 (N.Y. 1965) ("The provision for appointing a guardian within three years is not an end in itself, but an outside limit on how long the time may be extended.")

periods of limitation in personal injury actions. *Catterson v. Paquet Cruises, Inc.*, 513 F.Supp. 645 (S.D.N.Y. 1981). As part of that policy, Section 183b(c) was uniquely tailored to ensure that minors are protected by preserving the three-year time-frame for bringing suit until an appropriate representative is appointed.

Section 183b(c) plainly states that Respondent's "limitation of time prescribed in [its] contract **shall not be applicable** so long as no legal representative has been appointed for [an] incompetent [or] minor [who is entitled to recover on a claim]."(Emphasis added)

In the case at bar, both circumstances triggering the operative language of Section 183b(c) are present:

1) Plaintiff's entitlement to recover arose during her minority;
2) No legal representative was appointed.

The Eleventh Circuit's decision is also contrary to the interpretation placed on Section 183b(c) by at least one major cruise line. In particular, the Contract of Carriage (ticket) of Respondent's subsidiary, Holland America Line, states:

> In the case of a claim by or on behalf of a minor or legally incompetent person, the time perioud [sic] described above shall begin to run on the earlier of: (a) date of appointment of a legal representative for the minor or legally incompetent person, or their estate (as the case may be); or (b) three (3) years after the death, injury or damage, as applicable.

(App. F, p. 17 of "Terms and Conditions" therein)

The foregoing interpretation is the only one which gives effect to Section 183b(c)'s plain language and, importantly, assures equal application of the statute's provisions to minors and incompetents alike.

F. Respondent's one-year limitation provision, which runs from the *date of injury,* should not be enforced as it violates Section 183b(c), which requires that any shortened limitation period run from the *date of appointment of a legal representative*

Finally, Respondent's ticket limitation provision which purports to require Petitioner to bring suit "within one year after the date of the injury . . ." should be considered void as in violation of Section 183b(c). By law, an unrepresented minor may *not* be restricted to filing suit within one year after the *date of injury*. 46 U.S.C. app. § 183b(c). Instead, Section 183b(c) requires that any shortened time-frame run from the *date of appointment of a legal representative*. Accordingly Respondent's non-compliant limitation period should not have been applied to deprive Petitioner of her day in court.

The issue raised herein is of great public importance because it involves the rights of victims whose interests Congress sought to protect by the enactment of Section 183b(c), but whose rights are in serious jeopardy of being subject to disparate treatment unless this Court intervenes. This Court's intervention is necessary in order to assure that all claimants whose rights are governed by said provisions are afforded equal protection under the statute.

The purpose of Section 183b(c) is to protect minors who do not have legal representatives to act in their stead and whose parents – for whatever reason – do not assert a claim

on their child's behalf.[3] That protection is placed in serious jeopardy unless this Court settles the correct interpretation that should be accorded to Section 183b(c). It is only by reasonably interpreting the restored limitation period which Section 183b(c) affords as including the full admiralty limitation period that the public benefit intended by Congress can be realized.

Unless this Court accepts certiorari review and settles the manner in which Section 183b(c) is required to be interpreted, there is a substantial likelihood that the rights of other claimants in the same position as the Petitioner will be compromised or violated.

Certiorari review by this Court is necessary not only to assure uniformity of the manner in which Section 183b(c) is interpreted with respect to claimants who become entitled to sue during their minority and for whom no legal representative has been appointed, but also to guarantee that claimants falling within this broad class receive the equal protection that Section 183b(c) accords to represented minors and incompetents.

CONCLUSION

In sum, by the plain reading and logical interpretation of 46 U.S.C. app. § 183b(c), Petitioner had either one year from appointment of a legal representative or three years from the date of injury within which to bring suit against Respondent. Because she filed suit less than two years after her rape, there

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3 As too often is the case where the minor is a victim of rape, the parents are not immediately advised of the incident due to the shame of the minor victim, and thus have no knowledge upon which to even contemplate bringing suit on behalf of their child.

should be no question that she is entitled to maintain suit against Respondent and the Eleventh Circuit should have reversed the trial court's order granting summary judgment in favor of the Respondent.

For the foregoing compelling reasons, this Court should grant this Petition for Certiorari review in order to settle an important question of federal law arising under Title 46, United States Code, Appendix Section 183b(c) with respect to the rights of claimants whose entitlement to sue arises during their minority but for whom no legal representative has been appointed.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.05-13906-FF

[Filed June 21, 2006]

JANE DOE, (A.H,),
Plaintiff -Appellant,

versus

CARNIVAL CORP.,
Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: TJOFLAT, ANDERSON and CARNES, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules

of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/
UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 05-13906

[Filed February 14, 2006]

JANE DOE (A.H.),
Plaintiff-Appellant,

versus

CARNIVAL CORP.,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before TJOFLAT, ANDERSON and CARNES, Circuit Judges.

OPINION

PER CURIAM:

Jane Doe appeals the district court's grant of Carnival Corporation's motion for summary judgment. On appeal, the only issue is whether or not Appellant's complaint was time-barred.

Appellant alleges that she was sexually assaulted by a Carnival employee when she took a cruise as a seventeen year-old. Carnival presented evidence that it sends each ticket holder a contract upon purchase that contains a limitations period for the filing of suits based on personal injuries sustained aboard the ship. The limitations period on Appellant's ticket was for one year from the time she sustained the injury. Carnival's modified limitations period complied with federal admiralty law, which provides that the three-year limitations period can be contractually shortened to no shorter than a year. *See* 46 U.S.C. App. § 183b(a). In turn, this provision is limited by § 183b(c):

> If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: Provided, however, That such appointment be made within three years after the date of such death or injury.

46 U.S.C. App. § 183b(c) (emphasis in original).

Appellant filed the instant action more than one year from the date of her injury; and, more significantly, more than one year from the date of her eighteenth birthday, when she reached the age of majority. Appellant does not argue that she, or someone acting on her behalf, lacked notice of the one-year statute of limitations embodied in the ticket. Rather, she argues that the contract is not effective to bind her, because she was a minor at the time of execution of the contract and at the time of her injury. She argues that

§ 183b(c) is a partial codification of the common law, which historically did not enforce contracts against minors. In effect, she argues that § 183b(c) is not a tolling provision, but rather simply renders the contractual statute of limitations inoperative, therefore leaving the three-year federal admiralty law statute of limitations as the operative provision.

We reject appellant's construction of the statute. We look to the plain language of the statute. We conclude that it clearly does not incorporate the common law view that refused to recognize a contract with a person who was a minor at the time of execution. Contrary to the common law, it is clear that § 183b(c) does recognize the validity of such a contract with a minor: it expressly recognizes the applicability of the statute of limitations embodied in such a contract from and after the time that a legal representative is appointed for the minor. Thus, it is clear that § 183b(c) does not abrogate the contractually shortened statute of limitations, as urged by appellant, but rather simply tolls its operation until the appointment of the guardian.

Having concluded that § 183b(c) is a tolling provision, we also conclude that it merely tolls the operation of the shortened statute of limitations during the time that the party is a minor. This construction of the statute is bolstered by the use of the present tense in the statute: "If a person . . . *is* . . . a minor . . . any lawful limitation of time prescribed in such contract shall not be applicable . . . ." (emphasis added). Thus, we conclude that § 183b(c) tolled the operation of the contractually shortened statute of limitations until appellant reached the age of majority. Because appellant waited more than a year from that date, we conclude that the district court correctly held that the instant suit is barred by the statute of limitations.

Accordingly, the decision of the district court is affirmed.[1]

AFFIRMED.

[1] Appellant's request for oral argument is denied.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 05-20577-CIV-ALTONAGA/Turnoff

[Filed June 10, 2005]

ASHLEY HARTS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CARNIVAL CORPORATION,	)
	)
Defendant.	)
	)

ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANT

THIS CAUSE came before the Court on Defendant, Carnival Corporation's ("Carnival['s]") Motion to Dismiss the Amended Complaint **[D.E. 10]**, which the Court converted to a motion for summary judgment on April 26, 2005 [D.E. 18]. On March 1, 2005, Plaintiff, Ashley Harts, filed a civil action to recover for injuries that she allegedly suffered aboard Carnival's ship, the Carnival Legend, during a vacation cruise. Ms. Harts' Amended Complaint [D.E. 7]

contains one count of negligence against Carnival. Carnival now moves for summary judgment, claiming that the action is time-barred because Ms. Harts failed to provide full particulars of her claim in writing within 185 days after the date of her injury and failed to file her lawsuit within one year of the injury, as required by the terms of her Guest Ticket Contract. Ms. Harts claims that the Guest Ticket Contract's time limitations are inapplicable because she was a minor at the time she was injured.

I. BACKGROUND

Ms. Harts alleges the following facts in her Amended Complaint. On or about March 18, 2003, while Ms. Harts was passenger on board the Carnival Legend, a member of the ship's crew sexually assaulted and raped her. (Amend. Compl. ¶ 10.) At the time, the vessel was in navigable waters, and Ms. Harts was a paid passenger, although she did not receive a copy of her ticket for the cruise. *(Id.* ¶ 6.) Ms. Harts was born on August 2, 1985; therefore, she was 17 years old at the time of the alleged assault. *(Id.)*

Suzanne Vazquez, a Manager of Guest Claims for Carnival, submitted an Affidavit stating that Carnival's usual custom and practice is to mail passengers a Guest Ticket Contract after passage is booked and that passengers must present a ticket prior to boarding. (Vazquez Aff. [D.E. 10 Ex. A] ¶ 3.) Ms. Vazquez states that in this case, Ms. Harts' ticket was mailed by February 10, 2003. *(Id.* ¶ 4.) Attached to Ms. Vazquez's Affidavit is an example of the Guest Ticket Contract applicable to Ms. Harts' voyage. Article 14(a) of this Contract provides the following:

> Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest,

> unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

(Guest Ticket Contr. [D.E. 10 Ex. 1] at 9.)

Based on this provision of the Guest Ticket Contract, Carnival moved to dismiss Ms. Harts' suit as time-barred.[1] Carnival points out that Ms. Harts commenced her action more than one year from the date of her injury as well as more than one year from her eighteenth birthday. Furthermore, Ms. Vazquez states that upon review of Carnival's records, she could find no indication that Ms. Harts provided written notice of the particulars of her claim within 185 days of her alleged injury. (Vazquez Aft. ¶ 6.)

Ms. Harts does not argue that she, or someone acting on her behalf, lacked notice of the Guest Ticket Contract's terms prior to boarding the ship. Rather, she takes the position that the Guest Ticket Contract's limitation period and notice requirements are inapplicable to her because she was a minor

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[1] Because the Court intended to consider matters beyond the Amended Complaint in deciding Carnival's Motion to Dismiss, specifically Ms. Vazquez's Affidavit and the attached Guest Ticket Contract, the Court gave notice on April 26, 2005 of its intent to treat Carnival's Motion to Dismiss as a motion for summary judgment. None of the parties submitted any additional materials for the Court's consideration in response to this Notice.

at the time of her injury. She argues that instead of the Guest Ticket Contract's limitations period, the general three-year statute of limitations for maritime torts applies in her case. *See* 46 U.S.C. app. § 763a ("Unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued.").

Carnival counters by arguing that its Guest Ticket Contract legally shortens the statutory limitations period from three years to one year. Furthermore, it contends that because Ms. Harts is no longer a minor, she may not take advantage of statutory tolling provisions which apply only to minors, mentally incompetent persons, and deceased individuals for whom a legal representative has not been appointed. Therefore, based on the limitations period and notice requirements of the Guest Ticket Contract with which Ms. Harts failed to comply, Carnival maintains that it is entitled to judgment as a matter of law.

II. LEGAL STANDARD

Summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In making this assessment, the Court "must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party," *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11 th Cir. 1997), and "must resolve all reasonable doubts about the facts in favor of the non-movant,"

United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of America, 894 F.2d 1555, 1558 (11 th Cir. 1990).

"By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue *of material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248. Likewise, a dispute about a material fact is a "genuine" issue "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue ofmaterial fact." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). Summary judgment is proper "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* at 322. In those cases, there is no genuine issue of material fact "since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* at 323.

III. ANALYSIS

In general, a three-year statute of limitations applies to a suit for a maritime tort resulting in personal injury or death. 46 U.S.C. app. § 763a. However, a shipowner may impose by contract a shorter period for filing claims, giving notice of injury, or filing suit, but not below time limits established by Congress:

> It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

46 U.S.C. app. § 183b(a).

In this case, Carnival's Guest Ticket Contract requires an injured passenger to provide notice of the injury within 185 days, which is greater than the six-month statutory minimum of 46 U.S.C. app. § 183b(a). Likewise, the Guest Ticket Contract's one-year limitations period for bringing suit to recover for personal injuries is consistent with § 183b(a)'s statutory minimum. Accordingly, as the Guest Ticket Contract comports with the minimum statutory requirements, Carnival argues that Ms. Harts' suit must be dismissed because she failed to comply with its valid limitations periods.

Ms. Harts argues, however, that because she was a minor at the time of her injury, she is entitled to a waiver of the Guest Ticket Contract's limitations period. Specifically, she relies on the following statutory language:

> If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided, however,* That such appointment be made within three years after the date of such death or injury.

46 U.S.C. app. § 183b(c) (emphasis in original). Ms. Harts contends that because a legal representative was never appointed for her, the Guest Ticket Contract's limitations periods never became applicable to her.

To accept Ms. Harts' position, however, would require one to overlook the present tense of the verb "is" in the first sentence of § 183b(c): "If a person who is entitled to recover on any such claim *is* mentally incompetent or a minor . . . ." Ms. Harts, who is no longer a minor, contends that this sentence should be read as follows: "If a person who is entitled to recover on any such claim ***was*** mentally incompetent or a minor ***at the time of her injury*** . . . ." Ms. Harts' interpretation would mean that an injured minor would always retain the protection of § 183b(c), unless a legal representative were appointed, even if the minor achieved the age of majority and no longer satisfied the text of § 183b(c), which applies to a person who "is" a minor. No authority exists, however, for such an expansive reading of § 183b(c).

Ms. Harts claims that the relevant time period to determine whether someone "is" a minor is the moment at which the person becomes "entitled to recover" on a claim, which is the time of injury, rather the time of filing a lawsuit. She contends that she became "entitled to recover" when she was a minor and, accordingly, is covered by § 183b(c). Even accepting Ms. Harts" argument, though, that she became "entitled to recover" for her claim when she was a minor does not mean that she *currently* fits into one of § 183b(c)'s three categories of potential litigants: incompetents, minors, or decedent's estates, for which no legal representative has been appointed.

Ms. Harts also argues that § 183b(c) was enacted because, historically, admiralty law did not enforce maritime contracts against minors. *See Sheafe v. Kimball,* 21 F. Cas. 1208, 1209 (S.D.N.Y. 1851) ("[T]he respondent was a minor, and not bound by the contract, even if entered into by him personally. There is no distinction between the maritime law and common law in respect to the construction and obligation of contracts."). She therefore contends that she was never bound by the General Ticket Contract's terms and conditions and that § 183b(c) recognizes this fact.

A close reading of § 183b(c), however, reveals that Congress did intend persons, who may otherwise lack capacity to enter into a contract, to be bound by a maritime contract's lawful time limitations, under certain conditions. Specifically, a lawful limitation of time prescribed in a maritime contract is applicable to a mentally incompetent person, a minor, or a deceased individual (persons who generally lack capacity to enter into contracts) once a legal representative is appointed for the person. This evinces Congress's intent to provide relief from a maritime contract's time limitations period only in those cases where an individual

is most in need of protection–that is, when the individual is incompetent, a minor, or deceased and has no legal representative to act on his or her behalf.

In this case, Ms. Harts is not one of those individuals, specified by Congress in § 183b(c), most in need of protection from a maritime contract's time limitation provisions. Upon reaching the age of majority, Ms. Harts achieved the capacity to act on her own behalf. She no longer fit into one of § 183b(c)'s three categories of incompetents, minors, and deceased individuals with no legal representative. Her reliance on *Boehnen v. Carnival Cruise Lines, Inc.*, 778 So. 2d 1084 (Fla. 4th DCA 2001), is therefore misplaced. In *Boehnen,* the plaintiff was "a mentally incompetent person and, as such, was protected by § 183b(c) when she filed her original complaint within three years from the date of her injury." *Id.* at 1085. In this ease, Ms. Harts was *not* a minor (or incompetent person or deceased individual) when she filed her original complaint. She was therefore not protected by § 183b(c).

Because Ms. Harts is not a minor acting without an appointed legal representative, she may not claim the protection of § 183b(c). Accordingly, the limitations periods in Carnival's Guest Ticket Contract apply to Ms. Harts' claim. There is no genuine issue of material fact as to whether Ms. Harts complied with these limitations periods. The undisputed facts of this case show that she has not. Accordingly, it is

ORDERED AND ADJUDGED that Carnival's Motion to Dismiss the Amended Complaint **[D.E. 10]**, which the Court converted to a motion for summary judgment on April 26, 2005 [D.E. 18] is **GRANTED**. Summary judgment is entered

in favor of Camival, and the Amended Complaint is **DISMISSED WITH PREJUDICE**.

DONE AND ORDERED in Chambers at Miami, Florida this 10 day of June, 2005.

/s/ Cecilia M. Altonaga
CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

Case No. 05-20577-CIV-ALTONAGA/Turnoff

[Filed June 10, 2005]

ASHLEY HARTS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CARNIVAL CORPORATION,	)
	)
Defendant.	)
	)

FINAL JUDGMENT FOR DEFENDANT

THIS CAUSE came before the Court on the Order Granting Summary Judgment for Defendant. Pursuant to Federal Rule of Civil Procedure 58, it is

ORDERED AND ADJUDGED that judgment is entered in favor of Defendant, Carnival Corporation, and against Plaintiff, Ashley Harts. Plaintiff shall take nothing from Defendant, and the action is **DISMISSED** on the merits. The Clerk of the Court is instructed to **CLOSE** the case, and all

pending motions not otherwise ruled on are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida this 10 day of June, 2005.

/s/ Cecilia M. Altonaga
CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

APPENDIX E

TITLE 46. APPENDIX. SHIPPING
CHAPTER 8. LIMITATION OF VESSEL OWNER'S LIABILITY

46 U.S.C. Appx § 183b. Stipulations limiting time for filing claims and commencing suit

(a) Time periods. It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) Claims not barred for failure to give notice. Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim--

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) Mental incompetents; minors; wrongful death actions. If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided, however*, That such appointment be made within three years after the date of such death or injury.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO.: 05-13906-FF

Lower Tribunal Case No.:
05-20577-CIV-Altonaga/Turnoff

[Filed September 12, 2005]

A. H.,	)
Plaintiff/Appellant,	)
	)
v.	)
	)
CARNIVAL CORPORATION,	)
Defendant/Appellee.	)
	)

APPELLANTS NOTICE OF FILING SUPPLEMENTAL AUTHORITY OR IN THE ALTERNATIVE, MOTION TO REMAND FOR CONSIDERATION OF ADDITIONAL EVIDENCE

Appellant, A. H., hereby respectfully files the attached supplemental authority in support of Appellant's position herein: A sample boarding ticket from Holland America Line, a subsidiary of Appellee, CARNIVAL CORPORATION, wherein on page 17, the cruise line interprets the appropriate

time-frame within which a minor may bring suit against a cruise line consistently with Appellant's position below.[2]

The attached was discovered by trial counsel for Appellant. As there is no case law directly on point on the issue to be determined by this appeal (i.e., how long does a minor have to bring suit against a cruise line for an on-board injury), the Appellant suggests the attached will be of assistance to this Court.

In the alternative, the Appellant moves this Court to remand this case to the trial court for consideration of the attached. This appeal is in its infancy, and no briefs have been filed to date.

WHEREFORE, Appellant respectfully requests that this Court either accept the attached as supplemental authority or in the alternative, that the Court remand for consideration of the attached by the trial court.

By:/s/

REBECCA B. WATFORD
Fla. Bar No.: 939722
7685 S.W. 104th Street, Ste. 200
Miami, FL 33156
Telephone: 305-777-0331
Facsimile: 305-666-6658

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[2] The pertinent part of the contract states: "In the case of a claim by or on behalf of a minor or legally incompetent person, the time periouds [sic] described above shall begin to run on the earlier of: (a) date of appointment of a legal representative for the minor or legally incompetent person, or their estate (as the case may be); or (b) three (3) years alter the death, injury or damage, as applicable."

HOLLAND AMERICA LINE
TICKET

[p.17]

CONTRACT

Terms and Conditions

3. Time Limits for Noticing of Claims and Filing and Service of Lawsuits: In any case governed by 46 United States Code Section 183b, which is a United States statute that permits any shipowner to limit the time during which a passenger may file a claim or commence suit against a shipowner, you may not maintain a lawsuit against us or the Ship for loss of life or bodily injury unless written notice of the claim is delivered to us not later than six (6) months after the day of death or injury, the lawsuit is commenced not later than one (1) year after the day of death or injury, and valid service of the lawsuit on Owner, the HAL Company or the Ship, as applicable, is made within thirty (30) days following the expiration of that one-year period. For all other claims, including but not limited to claims for loss or dammage to baggage, breach of contract, illness or death or injury, not governed by 46 United States Code Section 183b, you may not maintain a lawsuit against us or the Ship, nor we or the Ship be liable therefore, unless we are provided with written notice of claim within thirty (30) days after conclusion of the Cruise or Cruisetour; the lawsuit for such claim is commenced not later than one-year after the conclusion of the Cruise or Cruisetour, and valid service of the lawsuit on Owner, the Ship or the HAL Company, as applicable, is made within thirty (30) days following the expiration of that one-year period. In the case of a claim by or on behalf of a minor or legally incompetent person, the time perioud described

above shall begin to run on the earlier of: (a) date of appointment of a legal representative for the minor or legally incompetent person, or their estate (as the case may be); or (b) three (3) years after the death, injury or damage, as applicable.

4. Limitation on Liability/Non-HAL Services: (a) In the event you are injured, become ill, or die, or your property is lost or damaged, or you and/or your property is delayed, we will not be liable to you for any damages unless the occurrence was due to our negligence or willful fault. We disclaim liability to you under any circumstances for infliction of emotional distress, mental suffering or psychological injury which was not (i) the result of physical injury to you caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Ship; (ii) the result of you having been at actual risk or physical injury, and such risk was caused by the negligence or fault of a crewmember or the manager, agent, master, owner or operator of the Ship; or (iii) intentionally inflicted by a crewmember or the manager, agent, master, owner or operator of the Ship. In no event will we be liable to you for consequential, incidental, exemplary or punitive damages.